



Knowledge Path

Where to find information about current legal issues

Social Media's Infiltration into the Legal Environment

How is social media changing the legal environment? From juror postings on Twitter and Facebook, to court videos on YouTube, to attorney profiles on LinkedIn, social media has become a part of the legal world.

Juror use of social media is receiving a lot of attention. In June 2012 the Judicial Conference Committee on Court Administration and Case Management issued revised proposed model jury instructions for the "Use of Electronic Technology to Conduct Research on or Communicate about a Case."¹ The proposed instructions encourage judges to warn jurors before a trial, at the end of each day's deliberations and at the close of the case that they are prohibited from discussing the case in any way on social media. The instructions also encourage jurors to let the judge know if they become aware of another juror discussing the case through social media.²

These types of instructions are a response to jurors often searching the Internet for Facebook pages, blogs, newspaper articles and other information about the parties and attorneys involved in a case.³ A Reuters legal study found that in 2009 nationally there were twenty-one cases that were challenged on the basis of juror misconduct related to Internet use.⁴

Increasingly, attorneys are searching for juror information on social sites. Because *ex parte* commu-

nications with sitting jurors are not permitted, attorneys must be very careful when accessing online juror information. In New York, it has been determined that while it is acceptable for an attorney to view a juror's social media profile or postings, it is considered contact if the juror becomes aware of the monitoring.⁵

Social media relationships between judges and attorneys have also been a topic of discussion. In 2010, the Supreme Court of Ohio addressed the issue by indicating that a judge may be a "friend" on a social networking site of an attorney who appears as counsel in a case before that judge, but that the judge should disqualify him/herself if the social networking relationship creates bias. The Supreme Court, in this opinion, urged judges to maintain the utmost dignity when participating in a social networking site. It also noted that judges should not use the site to view information about a party or witness.⁶

An excellent source of further information about these issues is the National Center for State Courts (NCSC), which provides a resource guide on "Social Media and the Courts." The guide includes sections on "Social Media and Juries" with articles addressing juror use of social media during trials; a state-by-state listing of courts that have Twitter, Facebook, YouTube and Flickr accounts; use of cell phones and electronic devices in courts; and a listing of social media policies from various courts.⁷

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Footnotes

^{1&2} "Revised Jury Instructions Hope to Deter Juror Use of Social Media During Trial" *United States Courts*. 21 August 2012. <<http://news.uscourts.gov/revised-jury-instructions-hope-deter-juror-use-social-media-during-trial>>.

^{3&4} Davenport, Courtney L, "Here's Looking at You." 48 *Trial* 20-21 (March 2012).

⁵ Ibid, 23 and "Lawyers Using Social Media for Jury Research Must Be Wary of Accidental 'Communication'" 28 *ABA/BNA Lawyers' Manual on Professional Conduct*. 381 (20 June 2012).

⁶ Supreme Court of Ohio, Board of Commissioners on Grievances and Discipline, Op. 2010-7 (Dec. 3, 2010).

⁷ "Social Media and the Courts: Resource Guide" *National Center for State Courts*. 10 September 2012. <<http://www.ncsc.org/Topics/Media/Social-Media-and-the-Courts/Resource-Guide.aspx>>

For active links to the websites mentioned visit: <<http://tinyurl.com/9bqr9of>>